

IN THE COURT OF COMMON PLEAS

FOR THE STATE OF DELAWARE

2010 MAR -4 A 11:41

COURT OF
COMMON PLEAS

ORDER AMENDING RULE 72.1
OF THE COURT OF COMMON PLEAS
RULES OF CIVIL PROCEDURE

COURT OF COMMON PLEAS
GEORGETOWN DELAWARE
2010 FEB 25 P 2:44

This 18th day of March 2010, IT IS ORDERED that:

- 1) Court of Common Pleas Civil Rule 72.1 is amended by deleting the language in brackets and adding the language underlined:

Rule 72.1. Appeals from [the Department of Public Safety] certain commissions, boards, agencies and courts.

(a) *Application of Rule.* This Rule shall apply to appeals to the Court of Common Pleas from [the Department of Safety] certain commissions, boards, agencies and courts from which an appeal may at any time lie to the Court of Common Pleas to be tried or heard on the record made below.

(b) *How taken.* When an appeal is permitted by law, a party may appeal by filing a notice of appeal with the Clerk of the Court of the appropriate county within the time prescribed by statute. If no time is prescribed by statute, the notice of appeal shall be filed within 15 days from entry of the final judgment, order, or disposition from which an appeal is permitted by law.

(c) *Notice of appeal.* The notice of appeal shall specify the parties taking the appeal, shall designate the order, award, determination, or decree, or part thereof appealed from; shall state the grounds of the appeal; shall name the Court to which the appeal is taken; and shall be signed by the attorney for the appellant, or if the party is not represented by an attorney, by the appellant.

Notification of the filing of the notice of appeal shall be given by the Clerk of the Court by mailing copies thereof to all parties to the proceeding below. No notice of appeal need be given to the party or parties taking the appeal. The failure of the Clerk of the Court to give notice of the taking of the appeal shall not affect the validity of the appeal. The notification of a party shall be given by mailing a copy of the notice of appeal to the party's attorney of record or, if the party is not represented by an attorney, then to the party at the party's last known address, and such notification is sufficient notwithstanding the death of the party or of the party's attorney prior to the giving of the notification.

(d) *Docket entries.* The Clerk of the Court shall note in the appropriate docket the names of the parties to whom notices of appeal and citations have been mailed, the date of mailing, the names of the papers in which citations have been published, the dates of such publications, and the dates when citations for the record issued and were returned.

(e) *Citation for record.* Upon the filing of the notice of appeal, the Clerk of the Court shall forthwith issue a citation of the [Department of Public Safety,] certain commissions, boards, agencies and courts from which the appeal is taken, which citation shall be served upon the custodian of the records. The citation shall direct such custodian to send to the Court of Common Pleas of the county out of which the citation has issued, together with the citation, within 20 days from service thereof, a certified copy of the record of the proceedings below, including a typewritten copy of the evidence. It shall not be necessary to include a typewritten copy of the evidence as a part of the record if all parties having an interest in the outcome of the appeal shall file with the [Department of Public Safety,] certain commissions, boards, agencies or courts from which the appeal is taken, within 10 days from the filing of said notice of appeal, a written stipulation that the evidence may be omitted as part of the record, in which case the stipulation shall be included as a part of the record; provided that any Judge of the Court of Common Pleas may at any time thereafter order a typewritten copy of the evidence to be filed as a part of the record at any time during the pendency of the appeal.

(f) *Bond of nonresident appellant.* Any appellant who is a nonresident of this State may be required, upon motion in writing of the appellee and proof to the satisfaction of the Court of such nonresidence, by affidavit or otherwise, to give security for costs by a certain day, and in default thereof the appeal of such nonresident appellant may be dismissed.

(g) *Procedure for handling appeals.* Appeals shall be heard and determined by the Court of Common Pleas from the record of proceedings below, except as may be otherwise expressly provided by statute. The Clerk of the Court shall give all parties written notice of the date of the filing of the record of the proceedings below. The appellant's brief shall be served and filed 20 days after the date of said filing of such record as provided in Rule 72.1(e). The appellee's answering brief shall be served and filed 20 days thereafter. The appellant shall serve and file the reply brief, if any, not later than 10 days thereafter. If appropriate, the assigned judge shall schedule the case for argument.

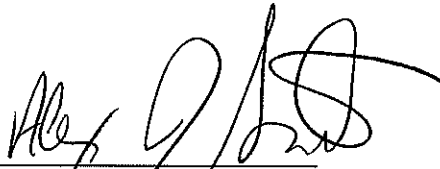
(h) *Cross-appeals.* Any party may cross-appeal from any judgment or order from which an appeal lies to the Court of Common Pleas to be tried or heard on the record made below. A notice of cross-appeal shall be filed within 10 days after the date on which the first notice of appeal was filed. The notice of cross-appeal shall designate the decree, judgment or order, or part thereof, sought to be reviewed. It shall be docketed under the same number as the main appeal, without payment of a filing fee. The caption of a cross-appeal shall be substantially in the following form:

A.B., Plaintiff (or Defendant) below,)	
Appellee and Cross-Appellant,)	No.
v.)	
C.D., Defendant (or Plaintiff) below,)	
Appellant and Cross-Appellee.)	

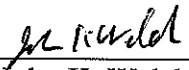
(i) *Dismissal*. At any time before filing of the appellee's brief, an appellant may dismiss the appeal voluntarily by serving a notice of dismissal upon the other parties to the appeal, by filing the same with the Clerk of the Court and paying the costs. Otherwise, a voluntary dismissal may be made only upon stipulation of all parties to the proceeding and with the approval of the Court.

The Court may order an appeal dismissed, sua sponte, or upon a motion to dismiss by any party. Dismissal may be ordered for untimely filing of an appeal, for appealing an unappealable, interlocutory order, for failure of a party diligently to prosecute the appeal, for failure to comply with any rule, statute, or order of the Court or for any other reason deemed by the Court to be appropriate. In the event that the Court shall conclude, sua sponte, that dismissal is appropriate, the Clerk of the Court shall forward to the appellant a notice directing that appellant show cause why the appeal should not be dismissed for the reasons stated in the notice. The notice shall direct the appellant to respond within 10 days after receipt of the notice. After consideration of such response, the Court shall enter an order dismissing the appeal or maintaining jurisdiction of the case. If a response is not filed within the time allowed, the dismissal shall be deemed to be unopposed. If the Court is satisfied that the appeal should be dismissed it shall enter an order of dismissal. Upon entry of any order of dismissal, the Court shall specify the terms thereof including provision for payment of cost.

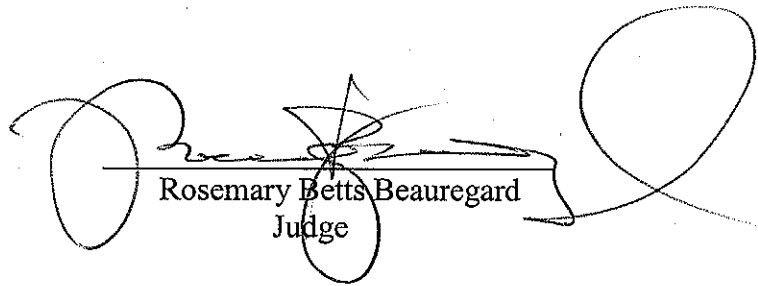
This rule shall become effective April 30, 2010.



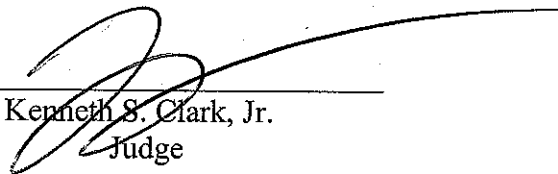
Alex J. Smalls,
Chief Judge



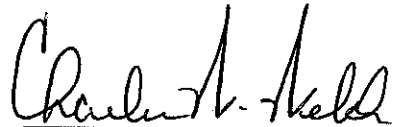
John K. Welch
Judge



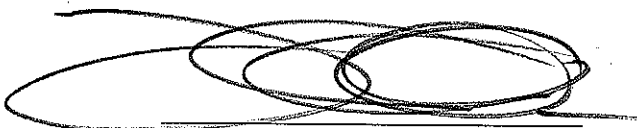
Rosemary Betts Beauregard
Judge



Kenneth S. Clark, Jr.
Judge



Charles W. Welch, III
Judge



Joseph F. Flickinger, III
Judge



Andrea L. Rocanelli
Judge



Anne Hartnett Reigle
Judge